

SENATE BILL NO. 183

INTRODUCED BY LAIBLE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE DUTIES OF REAL ESTATE BROKERS OR SALESPERSONS ACTING AS PROPERTY MANAGERS; REQUIRING COMPLIANCE WITH PROPERTY MANAGEMENT STATUTES AND RULES; REQUIRING DISCLOSURE NOTICE; PROVIDING FOR LICENSE REVOCATION OR SUSPENSION FOR FAILURE TO COMPLY WITH PROPERTY MANAGEMENT STATUTES, RULES, AND DISCLOSURE REQUIREMENTS; PROVIDING AN EXEMPTION FROM BEING LICENSED AS A PROPERTY MANAGER; AND AMENDING SECTIONS 37-51-313, 37-51-314, 37-51-321, AND 37-51-602, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-51-313, MCA, is amended to read:

"37-51-313. Duties, duration, and termination of relationship between broker or salesperson and buyer or seller. (1) The provisions of this chapter and the duties described in this section govern the relationships between brokers or salespersons and buyers or sellers and are intended to replace the duties of agents as provided elsewhere in state law and replace the common law as applied to these relationships. The terms "buyer agent", "dual agent" and "seller agent", as used in this chapter, are defined in 37-51-102 and are not related to the term "agent" as used elsewhere in state law. The duties of a broker or salesperson vary depending upon the relationship with a party to a real estate transaction and are as provided in this section.

(2) A seller agent is obligated to the seller to:

- (a) act solely in the best interests of the seller;
- (b) obey promptly and efficiently all lawful instructions of the seller;
- (c) disclose all relevant and material information that concerns the real estate transaction and that is known to the seller agent and not known or discoverable by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the seller agent;
- (d) safeguard the seller's confidences;
- (e) exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in complying with the terms established in the listing agreement;

1 (f) fully account to the seller for any funds or property of the seller that comes into the seller agent's
2 possession; and

3 (g) comply with all applicable federal and state laws, rules, and regulations.

4 (3) A seller agent is obligated to the buyer to:

5 (a) disclose to a buyer or the buyer agent any adverse material facts that concern the property and that
6 are known to the seller agent, except that the seller agent is not required to inspect the property or verify any
7 statements made by the seller;

8 (b) disclose to a buyer or the buyer agent when the seller agent has no personal knowledge of the
9 veracity of information regarding adverse material facts that concern the property;

10 (c) act in good faith with a buyer and a buyer agent; and

11 (d) comply with all applicable federal and state laws, rules, and regulations.

12 (4) A buyer agent is obligated to the buyer to:

13 (a) act solely in the best interests of the buyer;

14 (b) obey promptly and efficiently all lawful instructions of the buyer;

15 (c) disclose all relevant and material information that concerns the real estate transaction and that is
16 known to the buyer agent and not known or discoverable by the buyer, unless the information is subject to
17 confidentiality arising from a prior or existing agency relationship on the part of the buyer agent;

18 (d) safeguard the buyer's confidences;

19 (e) exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying
20 with the terms established in the buyer broker agreement;

21 (f) fully account to the buyer for any funds or property of the buyer that comes into the buyer agent's
22 possession; and

23 (g) comply with all applicable federal and state laws, rules, and regulations.

24 (5) A buyer agent is obligated to the seller to:

25 (a) disclose any adverse material facts that are known to the buyer agent and that concern the ability
26 of the buyer to perform on any purchase offer;

27 (b) disclose to the seller or the seller agent when the buyer agent has no personal knowledge of the
28 veracity of information regarding adverse material facts that concern the property;

29 (c) act in good faith with a seller and a seller agent; and

30 (d) comply with all applicable federal and state laws, rules, and regulations.

(6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them to:

(a) disclose to:

(i) a buyer or a buyer agent any adverse material facts that concern the property and that are known to the statutory broker, except that the statutory broker is not required to inspect the property or verify any statements made by the seller;

(ii) a seller or a seller agent any adverse material facts that are known to the statutory broker and that concern the ability of the buyer to perform on any purchase offer;

(b) exercise reasonable care, skill, and diligence in putting together a real estate transaction; and

(c) comply with all applicable federal and state laws, rules, and regulations.

(7) A dual agent is obligated to a seller in the same manner as a seller agent and is obligated to a buyer in the same manner as a buyer agent under this section, except as follows:

(a) a dual agent has a duty to disclose to a buyer or seller any adverse material facts that are known to the dual agent, regardless of any confidentiality considerations; and

(b) a dual agent may not disclose the following information without the written consent of the person to whom the information is confidential:

(i) the fact that the buyer is willing to pay more than the offered purchase price;

(ii) the fact that the seller is willing to accept less than the purchase price that the seller is asking for the property;

(iii) factors motivating either party to buy or sell; and

(iv) any information that a party indicates in writing to the dual agent is to be kept confidential.

(8) While managing properties for owners, a licensed real estate broker or licensed real estate salesperson must IS ONLY REQUIRED TO meet the requirements of part 6 of this chapter, OTHER THAN THOSE REQUIREMENTS FOR THE LICENSING OF PROPERTY MANAGERS, and the rules adopted by the board to govern licensed property managers.

~~(8)~~(9) (a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the earliest of the following dates:

(i) completion of performance by the agent;

(ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or

(iii) the occurrence of any authorized termination of the listing agreement or buyer broker agreement.

(b) A statutory broker's relationship continues until the completion, termination, or abandonment of the

1 real estate transaction giving rise to the relationship.

2 ~~(9)(10)~~ Upon termination of an agency relationship, a broker or salesperson does not have any further
3 duties to the principal, except as follows:

4 (a) to account for all money and property of the principal;

5 (b) to keep confidential all information received during the course of the agency relationship that was
6 made confidential at the principal's direction, except for:

7 (i) subsequent conduct by the principal that authorizes disclosure;

8 (ii) disclosure required by law or to prevent the commission of a crime;

9 (iii) the information being disclosed by someone other than the broker or salesperson; and

10 (iv) the disclosure of the information being reasonably necessary to defend the conduct of the broker
11 or salesperson, including employees, independent contractors, and subagents.

12 ~~(10)(11)~~ Consistent with the licensee's duties as a buyer agent, a seller agent, a dual agent, or a
13 statutory broker, a licensee shall endeavor to ascertain all pertinent facts concerning each property in any
14 transaction in which the licensee acts so that the licensee may fulfill the obligation to avoid error, exaggeration,
15 misrepresentation, or concealment of pertinent facts."

16
17 **Section 2.** Section 37-51-314, MCA, is amended to read:

18 **"37-51-314. Relationship disclosure requirements.** (1) A broker or salesperson shall disclose the
19 existence and nature of relevant agency or other relationships to the parties to a real estate transaction as
20 provided in this section.

21 (2) A seller agent shall make the required relationship disclosures as follows:

22 (a) The initial disclosure, as provided in subsection (6), must be made to the seller at the time the listing
23 agreement is executed.

24 (b) If a broker or salesperson is acting as a seller subagent, a subsequent disclosure, as provided in
25 subsection (7), must be made to the seller at the time negotiations commence.

26 (c) The subsequent disclosure established in subsection (7) must be made to the buyer or buyer agent
27 at the time negotiations commence.

28 (3) A buyer agent shall make the required relationship disclosures as follows:

29 (a) The initial disclosure, as provided in subsection (6), must be made to the buyer at the time the buyer
30 broker agreement is executed.

(b) If a broker or a salesperson is acting as a buyer subagent, a subsequent disclosure, as provided in subsection (7), must be made to the buyer at the time negotiations commence.

(c) The subsequent disclosure established in subsection (7) must be made to the seller or seller agent at the time negotiations commence.

(4) A statutory broker shall make the required relationship disclosures as follows:

(a) The initial disclosure, as provided in subsection (6), must be made to the buyer at the time the statutory broker first endeavors to locate property for the buyer.

(b) The subsequent disclosure, as provided in subsection (7), must be made to the seller or seller agent at the time negotiations commence.

(5) A buyer agent or seller agent who contemplates becoming or subsequently becomes a dual agent shall disclose the potential or actual relationship to the buyer and seller and receive their consent prior to the time or at the time that the dual agency arises. If the buyer agent or seller agent who contemplates becoming a dual agent has not previously given the buyer or seller the initial disclosure, as provided in subsection (6), the initial disclosure must be used, but if the initial disclosure has been given, any subsequent disclosures must take the form of the disclosure provided in subsection (7).

(6) The initial disclosure as required by subsections (2)(a), (3)(a), (4)(a), and (5) must be written and contain substantially the following information:

(a) a description of the duties owed by the broker and the salesperson as set forth in 37-51-313;

(b) a statement that reads as follows: "IF A SELLER AGENT IS ALSO REPRESENTING A BUYER OR A BUYER AGENT IS ALSO REPRESENTING A SELLER WITH REGARD TO A PROPERTY, THEN A DUAL AGENCY RELATIONSHIP MAY BE ESTABLISHED. IN A DUAL AGENCY RELATIONSHIP, THE DUAL AGENT IS EQUALLY OBLIGATED TO BOTH THE SELLER AND THE BUYER. THESE OBLIGATIONS MAY PROHIBIT THE DUAL AGENT FROM ADVOCATING EXCLUSIVELY ON BEHALF OF THE SELLER OR BUYER AND MAY LIMIT THE DEPTH AND DEGREE OF REPRESENTATION THAT YOU RECEIVE. A BROKER OR A SALESPERSON MAY NOT ACT AS A DUAL AGENT WITHOUT THE SIGNED, WRITTEN CONSENT OF BOTH THE SELLER AND THE BUYER".

(c) a definition of "adverse material fact";

(d) identification of the type of relationship disclosed;

(e) the signature of the seller or the buyer to whom the disclosure is given;

(f) the signature of the broker or the salesperson making the disclosure; and

1 (g) the date of the disclosure.

2 (7) The subsequent disclosure required by subsections (2)(b), (2)(c), (3)(b), (3)(c), (4)(b), and (5) or
3 otherwise necessitated by a change or prospective change in a relationship described in a previous disclosure
4 must be written, must contain the information required in subsections (6)(d), (6)(e), and (6)(g), and may be
5 included in other documents involved in the real estate transaction. If a seller or buyer has not previously
6 consented to the entry of the broker or the salesperson into a dual agency relationship, a subsequent disclosure
7 must include all the information required in subsection (6), including the seller's or buyer's written consent to the
8 dual agency relationship.

9 (8) A broker or salesperson, while managing properties for owners, shall disclose to all customers and
10 clients the contractual relationship of the broker or salesperson. Additional disclosures are not required when
11 a broker or salesperson is conducting property management activities.

12 (9) WHEN A BROKER OR SALESPERSON IS ACTING ONLY AS A PROPERTY MANAGER, ANOTHER RELATIONSHIP
13 DISCLOSURE IS NOT REQUIRED AND A DISCLOSURE THAT COMPLIES WITH SUBSECTION (8) MUST BE CONSTRUED AS A
14 SUFFICIENT DISCLOSURE OF THE CONTRACTUAL RELATIONSHIP.

15 ~~(8)(9)(10)~~ Any disclosure required by this section may contain the following information:

16 (a) a description of the other relationships and corresponding duties available under this part, as long
17 as the disclosure clearly indicates the relationship being disclosed;

18 (b) a consent to the creation of a dual agency relationship;

19 (c) other definitions in or provisions of this chapter; and

20 (d) other information not inconsistent with the information required in the disclosure.

21 ~~(9)(10)(11)~~ A written disclosure that complies with the provisions of this section must be construed as
22 a sufficient disclosure of the relationship between a broker or salesperson and a buyer or seller and must be
23 construed as conclusively establishing the obligations owed by a broker or salesperson to a buyer or seller in
24 a real estate transaction ~~or to a customer or client if a broker or salesperson is managing properties for owners.~~"

25
26 **Section 3.** Section 37-51-321, MCA, is amended to read:

27 **"37-51-321. Revocation or suspension of license -- initiation of proceedings -- grounds.** (1) The
28 board may on its own motion and shall on the sworn complaint in writing of a person investigate the actions of
29 a real estate broker or a real estate salesperson, subject to 37-1-101 and 37-1-121, and may revoke or suspend
30 a license issued under this chapter when the broker or salesperson has been found guilty by a majority of the

board of any of the following practices:

(a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, ~~which~~ if the advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name, the broker does not incorporate the broker's own name or the trade name, if any, by which the office is known in the franchise name or logotype. The board may not adopt advertising standards more stringent than those set forth in this subsection.

(b) making any false promises of a character likely to influence, persuade, or induce;

(c) pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salespersons or any medium of advertising or otherwise;

(d) use of the term "realtor" by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(e) failing to account for or to remit money coming into the broker's or salesperson's possession belonging to others;

(f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing to disclose in advertisements for real property the person's dual capacity as broker and principal;

(h) guaranteeing, authorizing, or permitting a person to guarantee future profits that may result from the resale of real property;

(i) offering real property for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;

(j) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

(k) accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson has an undisclosed interest;

(l) negotiating a sale, exchange, or lease of real property directly with a seller or buyer if the broker or salesperson knows that the seller or buyer has a written, outstanding listing agreement or buyer broker

1 agreement in connection with the property granting an exclusive agency to another broker;

2 (m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of
3 influencing a purchaser or prospective purchaser of real property;

4 (n) representing or attempting to represent a real estate broker other than the employer without the
5 express knowledge or consent of the employer;

6 (o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its
7 execution;

8 (p) paying a commission in connection with a real estate sale or transaction to a person who is not
9 licensed as a real estate broker or real estate salesperson under this chapter;

10 (q) intentionally violating a rule adopted by the board in the interests of the public and in conformity with
11 this chapter;

12 (r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody of
13 the salesperson's supervising broker, deposit money or other money entrusted to the salesperson in that
14 capacity by a person, except if the money received by the salesperson is part of the salesperson's personal
15 transaction;

16 (s) demonstrating unworthiness or incompetency to act as a broker or salesperson; ~~or~~

17 (t) conviction of a felony;

18 (u) failing to meet the requirements of part 6 of this chapter or the rules adopted by the board governing
19 property management while managing properties for owners; or

20 (v) failing to disclose to all customers and clients, including owners and tenants, the broker's or
21 salesperson's contractual relationship while managing properties for owners.

22 (2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others,
23 whether by means of printed material, radio, television, or display or by other means, unless the broker or
24 salesperson has a signed listing agreement from the owner of the property. The listing agreement must be valid
25 as of the date of advertisement.

26 (b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including
27 information on properties listed by other brokers or salespersons who will cooperate with the selling broker or
28 salesperson in materials dispensed to prospective customers.

29 (c) The license of a broker or salesperson who violates this subsection (2) may be suspended or
30 revoked as provided in subsection (1)."

1
2 **Section 4.** Section 37-51-602, MCA, is amended to read:

3 **"37-51-602. Definition of property management -- exemptions from application.** (1) An act
4 performed for compensation of any kind in the leasing, renting, subleasing, or other transfer of possession of
5 real estate owned by another without transfer of the title to the real estate, except as specified in this section,
6 constitutes the practice of property management. The provisions of this chapter do not apply to:

7 (a) a relative of the owner of the real estate, defined as follows:

8 (i) a son or daughter of the property owner or a descendant of either;

9 (ii) a stepson or stepdaughter of the property owner;

10 (iii) a brother, sister, stepbrother, or stepsister of the property owner;

11 (iv) the father or mother of the property owner or the ancestor of either;

12 (v) a stepfather or stepmother of the property owner;

13 (vi) a son or daughter of a brother or sister of the property owner;

14 (vii) a brother or sister of the father or mother of the property owner;

15 (viii) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the
16 property owner; or

17 (ix) the spouse of the property owner;

18 (b) a person who leases no more than four residential real estate units;

19 (c) a person acting as attorney-in-fact under a power of attorney from the owner of real estate who
20 authorizes the final consummation of any contract for the renting or leasing of the real estate. This exemption
21 is meant to exclude a single or irregular transaction and may not be routinely used to escape the necessity of
22 obtaining a license.

23 (d) an attorney at law in the performance of duties as an attorney;

24 (e) a receiver, trustee in bankruptcy, personal representative, person acting in regard to real estate
25 pursuant to a court order, or a trustee under a trust agreement, deed of trust, or will;

26 (f) an officer of the state or any of its political subdivisions in the conduct of official duties;

27 (g) a person acting as a manager of a housing complex for low-income individuals subsidized either
28 directly or indirectly by the state, any agency or political subdivision of the state, or the government or an agency
29 of the United States;

30 (h) a person who receives compensation from the owner of the real estate in the form of reduced rent

1 or salary, unless that person holds signatory authority on the account in which revenue from the real estate is
2 deposited or disbursed;

3 (i) a person employed by the owner of the real estate if that person's property management duties are
4 incidental to the person's other employment-related duties; or

5 (j) a person employed on a salaried basis by only one person.

6 (2) A licensed real estate broker on active status or a licensed real estate salesperson on active status
7 and acting under the supervision of a real estate broker may act as a property manager without meeting any
8 qualifications in addition to those required for licensure as a real estate broker or real estate salesperson and
9 without holding a separate property manager's license."

10 - END -